THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.15626 of 2002

DATED: 18.07.2007

Between:

Dr.Y.Ramakrishnaiah .. Petitioner

And

The Municipal Commissioner,
Tirupati Municipality, Tirupati, Chittoor District
and others. .. Respondents

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.15626 of 2002

ORDER:

In this writ petition, the petitioner seeks directions by way of a Mandamus not to allow the third respondent to run a Hospital in the house bearing Dr.No.18-2-243/9, Ashoknagar, Tirupati, which is adjacent to his house, and to declare the action of the respondents 1 and 2 in not initiating action against the third respondent for running such a Hospital, as illegal and arbitrary.

2. In the affidavit filed in support of the writ petition, the petitioner stated that he purchased a double storied house bearing D.No.18-2-243/8 situated at Ashoknagar, Tirupati, Chittoor District, on 15.09.1999 and residing in it.

It is the grievance of the petitioner that the third respondent is running a Hospital just adjacent to the premises of the petitioner and there is a likelihood of treating even the patients suffering from infectious diseases. Further, it is the case of the petitioner that the locality where he is residing is a residential area, and as such, it is not open for the third respondent to run such a Hospital. Further, the petitioner contends that, earlier, the third respondent had constructed two storied building for running a hospital for children and also made constructions in front portion of his house, which was vacant, and that now, he is raising fourth floor illegally and without taking due

permission from the competent authority, as required under the Municipality Act.

3. Though the writ petition is of the year 2002, no counter affidavit is filed on behalf of the Municipality.

4. The third respondent has filed a counter affidavit, in which, he has stated that the constructions made by him are in accordance with the sanctioned approved plans obtained from the Municipality. The third respondent further stated that even for extension of the building in the vacant site in front of his house, he has obtained permission and made constructions in accordance with the sanctioned plan only. It is also stated that the petitioner has already filed a Civil Suit in O.S.No.932 of 2002 on the file of Additional Junior Civil Judge, Tirupathi, seeking permanent injunction raising such similar contentions and the matter is pending, consideration.

5. Heard the learned counsel for the petitioner, the learned Standing Counsel for the Municipality and also the learned counsel for the third respondent.

6. It is submitted by the learned counsel for the petitioner that as much as the area where the petitioner and the third respondent are residing is a residential area, it is not open for the third respondent to run a Hospital for treating patients suffering from infectious diseases. At the outset, it has to be seen that though the petitioner has earlier filed a suit against the third respondent in O.S.No.932 of 2002 on the file of Additional Junior Civil Judge, Tirupathi, stating that the area where the third respondent is running a Hospital is a residential area, but there are no particulars with regard to any such declaration by any competent authority under the provisions of Urban Areas Development

Act. It is also not clear from the pleadings that in which zone the buildings of the petitioner and the third respondent are situated. In absence of any particulars with regard to the master plan and usages as notified, it is not possible for this Court to decide the area in which the third respondent is running a Hospital and whether it is in accordance with such usages notified in the master plan or not. Further, with regard to the alleged constructions, it is the case of the petitioner that the constructions made by the third respondent are without any sanctioned approved plans by the competent Municipal Authority, but the same is denied in the counter affidavit filed by the third respondent.

In view of the factual disputes and in absence of any particulars to show that the area where the third respondent is running a Hospital is a residential notified area, it is not possible for this Court in this writ petition to grant direction as prayed for, as the petitioner has already filed a suit, and he can establish his claim by contesting in the very same suit itself.

7. Subject to the above observations, the writ petition is devoid of merit, and is accordingly dismissed. No order as to costs.

_____

(R.SUBHASH REDDY,J)

Dt.18.07.2007

v v